MARQUETTE COUNTY
PROBATE COURT

MICHAEL J. ANDEREGG
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June 27, 2006

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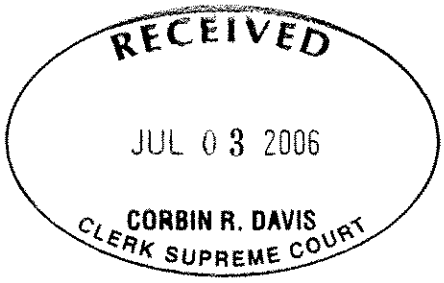

Re: ADM File 2005-04

Dear Mr. Davis:

Please add these comments to others you have received about the proposed revisions to the Juvenile Court Rules contained in the above-cited file:

1.) MCR 3.063(B)

The proposed amendment uses the term "designee" and removes the judicial officer's authority to authorize a peace officer to take a child into custody. It is unclear to me whether the intention is to allow the court to designate some other person, or to have the protective service worker designate a person to remove the child. I would favor keeping the language that allows a court to give a peace officer authority to remove – some of these situations may be dangerous – and oppose the amendment if the court-ordered removal authority can be transferred by the protective services worker to anyone he or she chooses. I think the court which issues the order should retain some control over who enforces it.

2.) MCR 963(B)(11),(C)(3)

There are two problems with this rule: The court should have the authority to place a child with a relative as well as at home or in foster care, and the existing language says "If placement is ordered..." If the intent of these amendments is to assure eligibility for Title IV-E funding, a specific order placing the child into foster care at a preliminary hearing will permanently disqualify funding for that

placement because HHS will take the position that the Department's authority to direct the placement has been compromised.

3.) MCR 3.966(A)(2)

The proposed language refers to the "...progress of the child...". The purpose of this review actually to preserve IV-E eligibility, and it has very little to do with the "progress of the child". Rather, the policy behind the federal review requirements are to assure the agency is providing services to assist the child's family, and to assure that a permanent placement is achieved as soon as possible.

In general, I would prefer it if the Court would use some new term for pre-adjudication funding status reviews to avoid confusing them with dispositional review hearings.

The balance of Rule 3.966 refers to reviews "court hearings" upon written notice. The proposed language is not clear about whether the additional "review" in 3.966 (A) (2) is a court hearing with parties and counsel present. If it is, the proposed rule will result in additional demands on court dockets, caseworker time, and county budgets to pay for court-appointed counsel to attend the additional hearings.

4.) MCR 3.972

See Comment 3 as to calling these hearings something other than "review hearings." This proposal does call the review a "hearing." In general, this rule eliminates a circuit judge's discretion to adjourn a trial. What if an attorney becomes ill and cannot proceed? What if the defense is trying to locate an expert and the prosecution refuses to stipulate to an adjournment? While the main part of the rule is not now being published for comment, it should be, especially in light of the caseflow management system which will allow precise tracking of time intervals between petitions and trials. Will we see a system any time soon that requires all other types of complex civil litigation to be tried within 63 days? I think I can predict what the Michigan Bar Association's reaction would be to such a proposal.

5.) MCR 3.974 (2) & 3.974 (B)

This rule is entitled "Review of Child's Progress", but the required reviews should not be focused on the child's progress. See Comment 3. Proposed changes will add two required hearings during the first year, increasing the demands on docket time, caseworker time, and funding for court-appointed counsel. If the

Court adopts this change, can counties seek additional reimbursement from the state under the Headlee amendment?

6.) MCR 3.974 (3)

The staff comment does not set forth any rationale for requiring a new petition and a preliminary hearing if a child already under court jurisdiction is removed. Is this proposal intended to entitle a parent to a new adjudicatory hearing? Another jury trial? Which portions of MCR 3.965 will apply and which will not?

Due process of law requires a prompt opportunity to appear in court with counsel to present evidence and request that the court reconsider the removal and future placement. Those rights are all adequately protected by MCR 3.974 (B), which this proposed amendment eliminates. The proposed addition to 3.974 (3) requires unnecessary court procedures and does not serve any legitimate purpose. It conflicts with the circuit court's inherent authority to make orders effectuating its own jurisdiction, and appears to address a substantive issue, rather than a procedural one. My understanding is that substantive issues should be addressed by legislation, not court rule.

Removal from home is a permissible disposition under MCL 712A.18. MCR 3.975 (G) (2) states that after a dispositional hearing, the court may order a child removed if removal would be appropriate for the child's welfare. That rule is consistent with common sense and prevailing practice, which allows the court to impose any statutorily-authorized disposition, including removal, after a full due process review hearing. Adoption of the proposed amendments is unduly restrictive and unnecessary.

7.) MCR 3.975 (H)

Elimination of this section suggests that the court cannot return a child except during a review hearing. How do we reconcile this with proposed MCR 3.974 (3), which states that a child may not be removed at a review hearing? This proposal is not consistent with the purported objective of the Adoption and Safe Families Act, which is to achieve a permanent placement for the child as rapidly as possible.

8.) MCR 3.976 (B) (i)

Where aggravated circumstances exist, a permanency planning hearing within 28 days is required by federal regulation to assure Title IV-E funding. The proposal would assure compliance with that requirement for Title IV-E funded cases. It would not be necessary for cases which are not funded by Title IV-E.

In formulating this rule, some thought should be given to what actually happens when cases of this kind come to court. If aggravated circumstances exist, how likely is a court to return the child to a parent at the end of 28 days? If the court does not return the child, the permanency planning hearing options [MCR 3.976 (E) (1-3)] state that the court must order a termination petition filed unless termination is not in the child's best interests. This seems unnecessary because on the initial petition, the petitioner can (and in some cases, must) request termination of the rights of one or both parents. If the petitioner has addressed this issue 28 days before the permanency planning hearing, why should the court address it again 28 days later?

If neither return or termination seem appropriate based on the information gathered in 28 days, the court must order foster care for a limited time, although adjudication is presumably not yet completed. Why not simply require the court at the 28-day hearing to determine whether the appropriate case plan is (eventual) return to the parents, termination of the rights of one or both parents, or some other plan and then allow case processing to proceed normally? Any rule adopted to govern 28-day permanency hearings should be designed to deal with the reality of the court's work, not simply harmonized with the other permanency planning provisions, which are intended to deal with post-dispositional reviews.

Proposed MCR 3.976 (4) is unclear. If it means the court must state its findings within the time limits, it should say so.

I apologize for the length of these comments. I felt it necessary to give detailed reasons supporting my suggestions. This process might be streamlined by having

standing committees of experienced judges to consider proposed changes in the court rules, as was done in the past.

Sincerely yours,

Michael J. Anderegg
Probate Judge

MJA/jth

Cc: Hon. Fred Mulhauser, President MPJA
Deborah Jensen, Children's Charter